

TROUTMAN SANDERS LLP

Jessica R. Lohr (Cal. Bar No. 302348)

jessica.lohr@troutman.com

5 Park Plaza, Suite 1400

Irvine, CA 92614

Telephone: 858-509-6000

Facsimile: 858-509-6040

John C. Lynch (*admitted pro hac vice*)

john.lynch@troutman.com

Virginia Bell Flynn (*admitted pro hac vice*)

virginia.flynn@troutman.com

222 Central Park Avenue, Suite 2000

Virginia, Beach, VA 23462

Telephone: 757-687-7765

Facsimile: 757-687-7510

Attorneys for Defendant

OCWEN LOAN SERVICING, LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Richard Quinones,

Plaintiff,

v.

Ocwen Loan Servicing, LLC,

Defendant.

Case No. 2:17-CV-03526-DDP-FFM

**DEFENDANT'S MOTION IN
LIMINE TO PRECLUDE
EVIDENCE REGARDING
EMOTIONAL DISTRESS**

Pretrial Conf.: October 22, 2018

Hearing Date: October 22, 2018

Hearing Time: 11:00 a.m.

Judge: Dean D. Pregerson

Dept: 9C

Trial Date: October 31, 2018

Defendant Ocwen Loan Servicing, LLC (“Ocwen”), by counsel, respectfully moves the Court in limine for entry of an Order prohibiting any mention of or reference to, by any party herein, in opening statements, in the questioning of witnesses and expert witnesses, in documentary evidence and exhibits, in closing arguments or in any other manner before the jury, evidence regarding Plaintiff’s alleged “emotional distress,” including, damages of any kind relating to Plaintiff’s alleged “emotional distress”.

I. ARGUMENT

A. Legal Authority

Plaintiff should be precluded from introducing evidence relating to any purported emotional distress she claims to have suffered as a result of Ocwen’s alleged conduct. Emotional distress damages are recoverable in cases “involving either physical impact and injury to plaintiff or intentional wrongdoing by defendant.” *Branch v. Homefed Bank*, 6 Cal. App. 4th 793, 799-801 (1992); *Lee v. Bank of America*, 218 Cal. App. 3d 914, 920-21 (1990). This case does not involve any physical impact and injury to Plaintiff, and Plaintiff’s negligence claim does not involve intentional conduct.

Branch acknowledges there are exceptions to this rule and a court may permit recovery of emotional distress damages absent impact or physical injury, where the “negligence is of a type which will cause highly unusual as well as predictable emotional distress.” *Id.* at 800. Cases where California courts have allowed plaintiffs to recovery for emotional distress relating to negligence are limited to acts of the tortfeasor that were “outrageous and reprehensible.” *Christensen v. Superior Court*, 54 Cal. 3d 868, 820 P.2d 181 (1991). For example, a doctor misdiagnosing a plaintiff’s wife with syphilis, *see Molien v. Kaiser Foundation Hospitals*, 27 Cal.3d 916, 930–31, 616 P.2d 813 (1980), a hired therapist sexually molesting a plaintiff’s sons, *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.*, 48 Cal.3d 583, 591 (1989), a school board failing to notify a

1 plaintiff that her daughter was sexually molested by a fellow student, *Phyllis P. v.*
 2 *Superior Court*, 183 Cal.App.3d 1193, 1197–98, 228 Cal.Rptr. 776 (1986), a
 3 crematorium mishandling the remains of plaintiffs' close relative, *Christensen*, 54
 4 Cal.3d at 894–896, and a company's unlawful disposal of toxic waste which caused
 5 plaintiff to develop a fear of cancer after ingesting contaminated water, *Potter v.*
 6 *Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 985, 863 P.2d 795 (1993). These
 7 “outrageous and reprehensible” acts are not at all analogous to Ocwen's alleged
 8 conduct, *i.e.*, Ocwen's attempts to contact Plaintiff regarding her mortgage.

9 Even if emotional distress damages were available under Plaintiff's
 10 negligence claim, she provided no evidence in discovery that she suffered severe or
 11 serious emotional distress, which is necessary for recovery. *See Wong v. Jing* 189
 12 Cal.App.4th 1354, 1376 (2010) (holding that plaintiff must show that emotional
 13 distress was serious in order to recover such damages). “[S]erious mental distress
 14 may be found where a reasonable man, normally constituted, would be unable to
 15 adequately cope with the mental stress engendered by the circumstances of the
 16 case.” *Id.* at 1377-78 (internal quotations and citations omitted). Plaintiff's
 17 discovery responses claim that she suffered “mental anguish marked by stress,
 18 anxiety, and sleeplessness”, which caused “stomach issues.” This purported
 19 emotional distress is not so serious that a reasonable person would be unable to
 20 cope with it.

21 In sum, Plaintiff has not and cannot establish that she is able to recover for
 22 emotional distress, and therefore should be precluded from offering mention or
 23 purported evidence of the same as it would be highly prejudicial and irrelevant.
 24 Fed. R. Evid. 401, 403.

25 **B. Terms of Order Sought**

26 Ocwen will move the Court to preclude any mention of or reference to, by any
 27 party herein, in opening statements, in the questioning of witnesses and expert
 28 witnesses, in documentary evidence and exhibits, in closing arguments or in any

1 other manner before the jury, evidence that Plaintiff suffered emotional distress as a
2 result of Ocwen's alleged conduct.

3 **II. CONCLUSION**

4 Given the foregoing, any mention of or reference to, by any party herein, in
5 opening statements, in the questioning of witnesses and expert witnesses, in
6 documentary evidence and exhibits, in closing arguments or in any other manner
7 before the jury, evidence that Plaintiff suffered emotional distress as a result of
8 Ocwen's alleged conduct must be excluded at trial.

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10 Dated: October 1, 2018

TROUTMAN SANDERS LLP

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12 By: /s/ John C. Lynch

13 John C. Lynch

14 Jessica R. Lohr

15 Virginia B. Flynn

16 *Attorneys for Defendant*
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